IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B. CIVIL WRIT PETITION NO. 79/2007
(Rameshwar Lal Vs. RSRTC through its Chairman, Jaipur & Ors.)

Date of Order : 18/01/2007

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. J.S.Bhaleria for the petitioner.

BY THE COURT:-

By the instant writ petition under Article 226 of the Constitution of India, the petitioner seeks quashing of order Annex.P-9 dated 25.7.2000, order Annex.P-11 dated 9.11.2000 and order Annex.P-13 dated 03.9.2004 and a direction to reinstate him in service with consequential benefits.

I have heard learned counsel for the parties at length.

It is contended by learned counsel for the petitioner that the inquiry conducted by the inquiry officer was not fair one and without affording the proper opportunity of defending the case to the petitioner, a conclusion has been arrived at by the inquiry officer and the disciplinary authority on which the penalty of removal from service as also forfeiture of the remaining salary

for the period of suspension have been imposed. It is further submitted that the appellate authority did not appreciate the contentions raised by the petitioner in the appeal filed by the petitioner against the order of disciplinary authority imposing penalties and it was lastly submitted that the inquiry officer himself found that the inspecting team at the time of inspection of the bus in which the petitioner was engaged as conductor, has not followed the proper procedure including taking of the signature of the petitioner on the unused tickets and BCR etc. at the site of the inspection and therefore, recommended for a proper guidelines to be issued for such inspection which shows that there was no fair inspection at the time of checking the bus and the passengers therein.

Briefly stated the facts giving rise to the instant writ petition to the extent they are relevant and necessary for the decision of this writ petition are that the petitioner was engaged as conductor by the respondent Rajasthan State Road Transport Corporation (for short 'the Corporation' hereinafter). On 24.4.1998 while the bus owned by the Corporation was plying between Bikaner-Ajmer route, in which the petitioner was conductor, was inspected at Deshnok Petrol Pump by the inspecting team of the Corporation and on inspection as many as 16 and half passengers were found without tickets. The petitioner having collected fare from those passengers i.e. 16

and half passengers did not issue tickets to them thereby causing financial loss to the Corporation. For this mis-conduct, the petitioner was served with a memorandum of charges vide Annex.P-1. The enquiry was conducted and enquiry officer vide enquiry report Ex.P-8 dated 19.6.2000 held that the charges have been proved against the present petitioner. The enquiry officer also noticed that at the time of inspection of the bus, in which 16 and half passengers were found traveling without tickets though they paid the fare to the conductor, the petitioner created such a situation hostile to the inspecting team including snatching of the log sheet, abusing the inspecting team, instigating the passengers so as to create hurdle in inspection of the bus and the passengers as also prevented the inspecting team to make certain remarks and complete the records which includes obtaining the signature of the petitioner on the unused tickets, signature of the driver and conductor on DCR, non-preparation of the BCR at the site etc. The disciplinary authority vide order dated 25.7.2000 Annex.P-9 imposed the penalty of removal from service under Section 36 (7) of the Standing Orders of the Corporation as also forfeiture of the remaining salary for the period of suspension under Section 36 (5) of the Standing Orders of the Corporation. The petitioner preferred an appeal before the appellate authority vide Annex.P-10 which came to be dismissed by the appellate authority vide Annex.P-11

by a detailed and well reasoned order. Thereafter, the petitioner preferred a writ petition being S.B.C.W No.4770/2001. However, the writ petition came to be dismissed on the ground that there is no approval from the Industrial Tribunal under Section 33 (2) (b) of the Industrial Disputes Act and the writ petition was dismissed as pre-matured, however, the petitioner was granted liberty to file fresh writ petition after approval is accorded by the Industrial Tribunal. Hence this writ petition.

The contention raised by the petitioner that there had not been a fair enquiry is wholly unfounded. I have carefully gone through the enquiry report Ex.P-8. The statements of witnesses have been recorded. The petitioner was afforded the opportunity to cross-examine the witnesses which he availed and every relevant material has been taken into consideration by the enquiry officer and after thorough discussion of the material available on record, the enquiry officer came to the conclusion that the charges have been proved against the petitioner. The enquiry report further reveals the manner in which the petitioner created a hostile atmosphere against the inspecting team which speaks of volumes. Even the petitioner snatched way-bill, abused the inspecting team, instigated the passengers so as to create hurdle and made an attempt to prevent the inspecting team to inspect the bus and did not allow the inspecting team to get the signature of the petitioner on the unused tickets, signature on

BCR etc. and therefore, in my view, in the facts and circumstances of the case, it could not have been possible for a team to have got the signature of the petitioner and the driver of the bus on unused tickets DCR and BCR. The enquiry officer found that it was the petitioner who has created a hostile atmosphere in order to prevent the inspecting team to inspect the bus and the passengers therein and preparing the documents for the inspection and therefore, in my view, any observation made by the enquiry officer on which the petitioner relies which runs contrary to its own conclusion is of no help to the petitioner. Even otherwise, the conclusion arrived at by the enquiry officer in clear terms holds the petitioner guilty of the charges. The appellate authority has taken in to consideration every piece of material and concurred with the finding of the enquiry officer and the disciplinary authority. Penalty of removal from service and forfeiture of salary for the remaining period of suspension is well within the competence of the corporation. At any rate, in whole of the case, the petitioner has not disputed that at the relevant time, he was conductor of the bus owned by the corporation and he charged fare from as many as 16 and half passengers without issuing tickets to them and thus causing financial loss to the respondent corporation. Therefore, it cannot be said that the report of the enquiry officer, disciplinary authority and the appellate authority suffer from any error or

illegality. So far as imposing penalties are concerned it cannot be said that they are disproportionate to that of the delinquency.

In Regional Manager, RSRTC Vs. Ghanshyam Sharma (2002) 10 SCC 330, a three Judges Bench of Hon'ble Supreme Court held that the proved acts of misconduct either to a case of dishonest or of gross negligence and bus conductors who by their actions and inactions cause financial loss to the Corporation ought not to be retained in service. A similar view was taken by Hon'ble Supreme Court in Karnataka SRTC Vs. B.S. Hullikatti, (2001) 2 SCC 574.

While considering the quantum of punishment, Hon'ble Supreme Court in Divisional Controller, KSRTC (NWKRTC) Vs. A.T.Mane (2005) 3 SCC 254 held that while considering the question of quantum of punishment, one should bear in mind the fact that it is not the amount of money misappropriated that becomes a primary factor for awarding punishment; on the contrary, it is the loss of confidence which is the primary factor to be taken into consideration. The Apex Court opined that when a person is found guilty of misappropriating the Corporation's funds, there is nothing wrong in the Corporation losing confidence or faith in such a person and awarding a punishment of dismissal.

In Divisional Controller, N.E.K.R.T.C. Vs. H. Amaresh AIR 2006 SC 2730, Hon'ble Supreme Court while setting aside

the order of the Division Bench ordering reinstatement held as under:-

> "We, therefore, have no hesitation to set aside the order passed by the learned Judges of the Division Bench and restore the order of dismissal of the respondent from service. It is stated that pursuant to the order of the Labour Court the respondent was reinstated in service. Since there was no stay granted by this Court the respondent had continued in service of the Corporation. In view of the law laid down by this Court and of the facts and circumstances of this case, the respondent, in our opinion has no legal right to continue in service any further. We, therefore, direct the appellant-Corporation to immediately discharge the respondent from service."

While examining the scope of interference in such matters, a three Judges Bench of Hon'ble Supreme Court in M.P. Electricity Board Vs. Jagdish Chandra Sharma (2005) 3 SCC 401 held that the tribunals would not sit in appeal over the decision of the employer unless there exists a statutory provision in this behalf. Moreover, Labour Courts must act within the four corners of the statute concerned, in terms of the provisions thereof. When the Labour Court having held that charge No.4 stood proved, no interference by the learned Single Judge or by the Division Bench was called for. In the instant case, the jurisdiction vested with the Labour Court has been exercised capriciously and arbitrarily in spite of the finding that Charge No.4, with regard to the pilferage, has been proved beyond any doubt. In our opinion, the conclusion arrived at by the High Court in

ordering reinstatement was shockingly disproportionate to the nature of charge No.4 found proved. When charge No.4 is proved, which is grave in nature, interference with the punishment of dismissal cannot be justified.

In this view of the matter, no case for interference is made out.

The writ petition has no force and it is, therefore, dismissed. There shall be no order as to costs.

(H.R.PANWAR),J.

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